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Cuevas v. Barraza Respondent's Brief Dckt. 40516

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IN THE SUPREME COURT OF THE STATE OF IDAHO
WILFRIDO CUEVAS, an individual,

Supreme Court No. 40516

Plaintiff – Counterdefendant-
Respondent

vs.

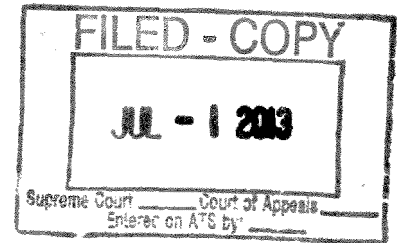
BERNARDINO BARRAZA, an individual
and spouse (if any),

Defendant-Counterclaimant-
Appellant,

and

LIOBALDO GARZA, an individual and
spouse (if any); DOES I THROUGH X,
UNKNOWN CLAIMANT TO THE REAL
PROPERTY DESCRIBED IN EXHIBIT “A”,
COMMONLY KNOWN AS 29452 PEARL
ROAD, PARMA, IDAHO,

Defendants.



RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT.

HONORABLE MOLLY J. HUSKEY, DISTRICT JUDGE PRESIDING.

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I. STATEMENT OF THE CASE

A. Nature of the Case

The present appeal addresses the very narrow issue of whether appellant, Bernardino Barraza, has vendee's lien rights that can still be enforced against a parcel of property located in Parma, Idaho. This is the only remaining issue in litigation attempting to quiet title to the subject property, which litigation has encompassed two lawsuits and lasted more than five years.

B. Course of Proceedings Below

This is the second appeal of case numbered 2009-8175 from the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon. The first appeal was from the district court's grant of Wilfrido Cuevas's¹ two motions for summary judgment: the first holding that the prior default judgment quieting title to appellant Barraza void and of no force and effect, and the second holding that there was insufficient evidence to support any of Barraza's claims to the property or against Wilfrido, including Barraza's claims for unjust enrichment.

By order dated March 22, 2012, this Court affirmed the district court's decision that the prior judgment quieting title in Barraza's name was void and affirmed the district court's decision denying Barraza's claim for unjust enrichment. This Court reversed that portion of the district court's judgment quieting title to Wilfrido because Barraza demonstrated factual issues regarding whether Wilfrido took title pursuant to Barraza's statutory claim for a vendee's lien and remanded to the district court for consideration of that narrow issue.

¹ In an effort to comply with I.A.R. 35(d) and avoid any possible confusion caused by identical sur names of Mr. Wilfrido Cuevas and his predecessor in interest, Mr. Juan Cuevas, Mr. Wilfrido Cuevas, the Respondent in this case, will respectfully be referred to as "Wilfrido."

On remand, Wilfrido brought summary judgment on Barraza's claim of a vendee's lien on the grounds that the unenforceable agreement for the purchase of real property cannot give rise to a vendee's lien and, alternatively, that the statute of limitations bars Barraza's vendee's lien claim. The district court, the Honorable Molly J. Huskey presiding, granted Wilfrido's motion for summary judgment and again entered a judgment quieting title in Wilfrido's name. This appeal followed.

C. Concise Statement of Facts

The facts relative to the present appeal, none of which are in dispute, are as follows:

The district court held that the alleged purchase agreement by and between Barraza and Juan Cuevas for the purchase of the subject property was unenforceable because it did not comply with the statute of frauds (Tr. (Vol. 1) 96:22—97:10) and granted Wilfrido's motion for summary judgment, quieting title in Wilfrido's name free and clear of any interest held by Barraza. While this Court did not expressly rule on the statute of frauds issue, it explained in a footnote that Barraza's claim for specific performance, to the extent one was made, was "simply not viable" noting that "it is not readily apparent that the contract between the parties complies with the statute of frauds...." *Cuevas v. Barraza*, 152 Idaho 890, 896, 227 P.3d 337, 343 n. 4 (2012). Barraza has not challenged any of the rulings that the alleged purchase agreement does not comply with the statute of frauds and that issue has not been presented on this appeal.

To the extent that any purchase agreement existed between Barraza and Juan Cuevas, the two parties agreed to rescind it and Barraza vacated the property. R. 000030. On May 2, 2002, Barraza filed a notice of lien reflecting the rescission agreement. R.

000030. Wilfrido Cuevas filed the present action to quiet title on August 7, 2009. R. 000001. Barraza answered, setting forth facts which allegedly give rise to his claimed vendee's lien, on August 28, 2009. R. 000001.

II. RESTATEMENT OF ISSUES ON APPEAL

A. Under Idaho's vendee's lien statute does a vendee's lien arise when the underlying agreement for the purchase of real property is invalid and unenforceable because it does not comply with the statute of frauds.

B. If an invalid purchase agreement does give rise to a vendee's lien, does a mutual agreement to rescind the invalid agreement trigger the running of the statute of limitations for enforcing any such vendee's lien.

III. ATTORNEY'S FEES ON APPEAL

Wilfrido seeks attorney's fees on appeal pursuant to Idaho Code Section 12-121 and Idaho Appellate Rule 41.

IV. ARGUMENT

This Court has two separate and distinct bases upon which it can affirm the district court's decision denying Barraza's claimed vendee's lien. First, because the underlying purchase agreement does not comply with the statute of frauds and is, therefore, invalid that purchase agreement cannot give rise to Barraza's claimed vendee's lien. Second, even if an invalid purchase agreement can create a vendee's lien, Barraza's rights to enforce the alleged vendee's lien are time barred because Barraza's and Juan Cuevas's mutual agreement to rescind the invalid purchase agreement is the event that triggered the running of the limitations period on Barraza's vendee's lien. For these reasons, Wilfrido respectfully requests that this Court affirm the decision of the District Court quieting title to the property in Wilfrido.

A. The district court properly held that a vendee's lien cannot attach to an invalid contract.

Idaho Code Section 45-804 provides that a vendee's lien exists where, under an agreement for the sale of real property, a purchaser pays to the seller a portion of the purchase price and there is a subsequent failure of consideration. The first question presented in this case is whether Idaho Code Section 45-804 gives rise to a vendee's lien when the purchase agreement upon which the lien claimant relies is invalid because it violates the statute of frauds. Because recognizing a vendee's lien where the underlying purchase agreement is invalid would circumvent the statute of frauds and create an interest in property where there is incompetent evidence to show that a purchase agreement existed, this Court should hold that a vendee's lien only exists where the underlying purchase agreement is valid.

Idaho courts of appellate review have not yet addressed the question of whether an invalid purchase agreement can give rise to a vendee's lien. However, the dissenting opinion in *Shepard v. Dougan*, which was decided on other grounds, supports the argument that the purchase agreement contemplated by Idaho Code Section 45-804 must be a valid purchase agreement.

[The statute] is intended to apply to cases of contract for the purchase of real property and is meant to protect the vendee, where he makes a payment on an agreed purchase price; and for some reason or other the vendor either is unable to give a title or refuses to comply with his agreement to do so and the consideration for the contract fails. But I am unable to find any case where the lien provided for in this statute has been extended ... to an incomplete contract or a so-called vendee who attempted to purchase under a *void* contract....

58 Idaho 543, 564, 76 P.2d 442, 450 (1937) (Ailshie, J., dissenting).

A contract for a deed, which are absolutely void from the beginning because of the fact that the vendor is entirely lacking in power and authority to transfer the premises, cannot be the foundation for a vendee's lien any more than they could be the foundation for any other legal or equitable interest in the premises.

Id. at 567, 76 P.2d at 452 (Ailshie, J., dissenting) (quoting *O'Neill v. Bennett*, 49 S.D. 524, 207 N.W. 453) (italics omitted). This Court's order dated March 22, 2012, noted that Barraza's claims for specific performance were not viable because "the record discloses several seemingly insurmountable obstacles to such a claim"—namely, that the alleged purchase agreement did not comply with the statute of frauds. *Cuevas v. Barraza*, 152 Idaho 890, 896, 277 P.3d 337, 343 n.4 (2012). Based on the rationale set forth in the *Shepard* dissent, this Court should hold that an invalid purchase agreement that will not support a claim for specific performance is also insufficient to give rise to a vendee's lien. Accordingly, Wilfrido requests that this Court affirm the district court's decision that the invalid purchase agreement between Barraza and Juan Cuevas does not give rise to Barraza's claimed vendee's lien.

B. The limitations period on Barraza's vendee's lien began to run on or before the date Barraza filed his claim of lien: May 2, 2002.

If this Court rejects the arguments set forth above and holds that a purchase agreement that does not satisfy the statute of frauds can still give rise to a statutory vendee's lien, Barraza's claims must still fail because the statute of limitations has run on Barraza's right to enforce such vendee's lien.

Whether the statute of limitations time bars Barraza's right to enforce any alleged lien is dependent on which event triggers the running of a limitations period. Barraza argues that the event that triggers the running of the limitations period was Juan Cuevas's

quiet title lawsuit, filed on April 2, 2007, because that is the date that Barraza became aware that Juan Cuevas had breached the parties' agreement rescinding the invalid purchase agreement. App. Br. 7. Conversely, Wilfrido argues that the appropriate triggering event (if any) is the date Barraza and Juan Cuevas mutually agreed to rescind the invalid purchase agreement, which Barraza acknowledged by vacating the property and filing a lien.

Idaho courts have not specifically identified the event which triggers the running of the statute of limitations on a claim for a vendee's lien. However, the vendee's lien statute provides valuable guidance as it protects the vendee "in case of failure of consideration." IDAHO CODE § 45-804. "The term 'failure of consideration' includes instances where a proper contract was entered into when the agreement was made, but because of supervening events, the promised performance fails, rendering the contract unenforceable." *World Wide Lease, Inc. v. Woodworth*, 111 Idaho 880, 884, 728 P.2d 769, 773 (1986) (citations omitted). Based on this statutory language, the right to enforce² a vendee's lien arises, and thereby begins the running of the limitations period, when the promised performance—delivery of title to the vendee—is no longer enforceable.³

In this matter, the alleged agreement for the purchase of the property was never enforceable because it violated the statute of frauds. *Cuevas v. Barraza*, 152 Idaho 890, 896, 277 P.3d 337, 343 n.4 (2012). Nevertheless, and even though the original purchase agreement was invalid, Juan Cuevas and Barraza mutually agreed to rescind the invalid

² A vendee's lien comes into existence at the time of payment of any part of the purchase price. *Benz v. D.L. Evans Bank*, 152 Idaho 215, 225, 268 P.3d 1167, 1177 (2012).

³ It does not appear as though a mutual contract for rescission is properly characterized as the failure of consideration which gives rise to a vendee's lien rights. *See, generally, Hoverson v. Evans*, 38 Idaho 428, 224 P. 1067 (1923) (discussing the nature of a mutual contract for rescission of real property and refusing to read into such contract a requirement that the vendor repay any amounts paid to the vendee).

purchase agreement. R. 000030. If the invalid purchase agreement was sufficient to give rise to a vendee's lien, the mutual rescission of the invalid purchase agreement was an additional event that rendered the invalid purchase agreement unenforceable. Accordingly, the rescission agreement is the event best characterized as the "failure of consideration" that would trigger the running of the limitations period.

While the record does not indicate when Juan Cuevas and Barraza mutually agreed to rescind the invalid purchase agreement, Barraza memorialized the rescission agreement by filing the notice of lien claim on May 2, 2002 (R. 000030), so the mutual rescission had to have occurred sometime prior to that date. Accordingly, pursuant to the undisputed record evidence, as of May 2, 2002, the invalid purchase agreement had been rescinded by mutual agreement of the parties, and the limitations period for Barraza to enforce his vendee's lien rights began to run on or before that date.

In an effort to save his vendee's lien from the statute of limitations, Barraza argues that the triggering event for limitations was the date Juan Cuevas breached the rescission agreement by filing a lawsuit to quiet title. In support of this argument, Barraza cites to the Court of Appeals Decision in *Cuevas v. Barraza*, 146 Idaho 511, 517, 198 P.3d 740, 746 (Ct. App. 2008) ("the five-year statute of limitation for Barraza to bring this breach of contract claim began to run when Barraza became aware of the breach. The breach alleged in Barraza's answer occurred when Cuevas filed the instant quiet title action—April 2, 2007."). App. Br. 7. However, Barraza's argument is not supported by Idaho's vendee's lien statute, which provides relief only when there is failure of consideration on a purchase agreement. In this case, Barraza and Juan Cuevas mutually rescinded the invalid purchase agreement; if filing a quiet title action on April 2,

2007, was a breach of any agreement, it was a breach of the rescission agreement, not the invalid purchase agreement. Accordingly, this Court should reject Barraza's argument that Juan Cuevas' alleged breach of the rescission agreement is the event that triggered the limitations period for Barraza's vendee's lien.

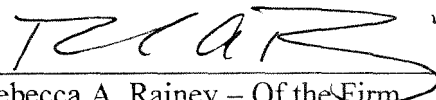
If Barraza did have an agreement for the purchase of real property sufficient to give rise to a vendee's lien, such agreement was rescinded, by mutual asset of the parties, sometime on or before May 2, 2002. Because the mutual rescission created yet another reason why the invalid purchase agreement could not be enforced, that event triggered the running of limitations on Barraza's vendee's lien rights. Wilfrido, therefore, requests that this Court hold that Barraza rights to enforce his vendee's lien are time barred under all possible limitations periods and on such grounds, affirm the decision of the district court.

V. CONCLUSION

The district court correctly ruled that Barraza does not have and cannot enforce vendee's lien rights. First, Barraza and Juan Cuevas did not have an enforceable agreement for the purchase of real property that would give rise to a vendee's lien under Idaho Code Section 45-804. Second, even if a vendee's lien can arise under an otherwise invalid purchase agreement, because the invalid purchase agreement was rescinded by mutual agreement of the parties on or before May 2, 2002, the limitations period for Barraza to enforce his vendee's lien rights expired and any lien rights that Barraza did have are now time barred. For these reasons, Wilfrido respectfully requests that this Court affirm the decision of the District Court quieting title in Wilfrido's name.

Dated this 1st day of July, 2013

RAINEY LAW OFFICE


By 
Rebecca A. Rainey – Of the Firm
Attorney for Plaintiff/Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 2013, I caused a true and correct copy of the foregoing **RESPONDENT'S BRIEF** to be served by the method indicated below, and addressed to the following:

Robert Ward
Hall, Friedly & Ward
340 E. 2nd North Street
Mountain Home, ID 83647

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Rebecca A. Rainey